



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
www.uspto.gov

Paper No. 22

Steven W. Smyrski, Esq.  
SMYRSKI & LIVESAY, LLP  
3310 Airport Avenue, SW  
Santa Monica, CA 90405-6118

**MAILED**

**FEB 7 2003**

**OFFICE OF DIRECTOR  
GROUP**

In re Application of:	:	
Nielsen, <i>et al.</i>	:	DECISION ON PETITION TO
Application No. 09/195,533	:	WITHDRAW
Filed: November 18, 1990	:	HOLDING
Attorney Docket No.: KLAC0015	:	OF ABANDONMENT

This is a decision on the petition filed on September 27, 2002, to revive the above-identified application. The petition has been treated as a petition to withdraw the holding of abandonment under 37 CFR § 1.181 for which no fee is required.

The petition is **granted**.

The application was held abandoned for failure to file a response to the Office action of February 28, 2001. A Notice of Abandonment was mailed on November 07, 2001.

Petitioner asserts that the application was erroneously abandoned because on May 29, 2001 (May 29, 2001 was a Holiday) the petitioner submitted a responsive amendment responding to all points raised by the Examiner in the Office action of February 28, 2001 and fully complying with 37 C.F.R. § 1.111. The amendment was filed with a Request for Continued Examination (RCE). Additionally, the petitioner asserts that the United States Patent Office (PTO) notified the applicant that the RCE was improper and that if the RCE was accompanied by a reply to a non-final Office action, the reply would be entered and considered under 37 C.F.R. § 1.111. The petitioner relied upon the notification from the PTO to await further consideration of the amendment filed concurrently with the RCE.

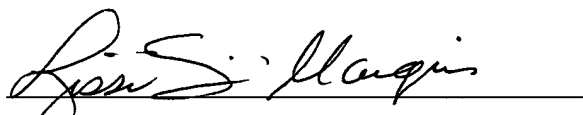
A review of the application file reveals that on June 01, 2001, the PTO received an improper RCE and an amendment in response to the Office action of February 28, 2001. The amendment included a Certificate of Mailing in compliance with 37 C.F.R. 1.8(a) having a date of deposit of May 29, 2001. In response to the improper RCE the PTO mailed a Notice of Improper Request for Continued Examination (FORM PTO-2051) indicating that continued examination under 37 C.F.R. 1.114 does not apply to an application unless prosecution in the application is closed.

Further, the PTO-2051 indicated that if the RCE was accompanied by a reply to a non-final Office action, the reply will be entered and considered under 37 C.F.R. § 1.111. Accordingly, the response to the non-final Office action of February 28, 2001 was timely, and the application was not abandoned, in fact.

For the above stated-reason, the petition is **granted**. The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. The application is restored to pending status.

The application file is being forwarded to the examiner for prompt appropriate action, including consideration of the amendment filed on June 01, 2001.

Inquiries regarding this decision should be directed to Lissi Mojica Marquis at (703) 308-2260.



Lissi Mojica Marquis, Special Programs Examiner  
Technology Center 2800  
Semiconductors, Electrical and Optical  
Systems and Components